

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

VS.

VERNON MCCULLUM, III,

Defendant.

3:13-cr-00012-RCJ-WGC-1

ORDER

Pursuant to a plea agreement with the United States, Defendant Vernon McCullum, III pled guilty in this Court to count five of the Superseding Indictment for transportation of a minor in interstate commerce for prostitution or other illegal sexual activity. The Court sentenced Defendant to 168 months imprisonment, to be followed by lifetime supervised release. Defendant petitioned the Court to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 based upon trial counsel's failure to appeal certain issues. The Court denied the petition, finding that the claim was both procedurally defaulted and without merit.

Defendant then simultaneously filed a notice of appeal with the Court of Appeals and a motion for a certificate of appealability in this Court pursuant to § 2253. The Court denied the motion, and the Court of Appeals denied a similar motion. Defendant has asked the Court to reconsider under Civil Rule 59(e). The Court declines to reconsider for three independently sufficient reasons. First, the motion is untimely. *See* Fed. R. Civ. P. 59(e) (providing twenty-eight days after the entry of an order to request reconsideration); Rules Gov'g § 2255 Proc'gs 12

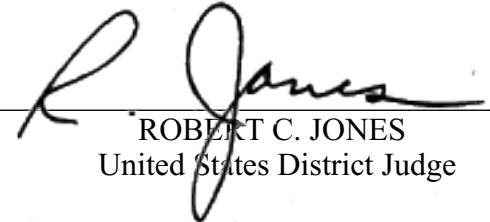
(providing that the Civil Rules apply in § 2255 proceedings where not inconsistent with statute or the § 2255 Rules). Second, the motion is without merit. Defendant reargues the same points the Court has previously rejected. Third, the Court is bound to deny the motion, because the Court of Appeals has denied an identical motion. Although the Court of Appeals did not directly review this Court's denial of the motion, but rather reviewed the motion in a separate proceeding, *see* Rules Gov'g § 2255 Proc'gs 11(a) (providing that a petitioner may file a motion in the court of appeals under Appellate Rule 22 if the district court denies his motion), the Court of Appeals' determination is now the law of the case, and this Court may not now rule to the contrary.

CONCLUSION

IT IS HEREBY ORDERED that the Motion for Reconsideration (ECF No. 153) is DENIED.

IT IS SO ORDERED.

Dated this 23rd day of July, 2014.



ROBERT C. JONES
United States District Judge